

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 In re:) Case No. 21-20706-B-7
4 MICHAEL CLAY TERRY and CRYSTAL)
5 LANNETTE TERRY,) DC No. CK-1
6)
7 Debtor(s).)
_____)

8 ORDER DENYING DEBTORS' MOTION TO CONVERT TO CHAPTER 13

9 Introduction

10 The court has before it a motion by debtors Michael and
11 Crystal Terry to convert their chapter 7 case to a chapter 13
12 case. The motion was initially filed *ex parte* on March 16, 2021.
13 It was re-filed as a noticed motion on April 13, 2021.

14 The court has reviewed the motion and all related documents.
15 The court has also reviewed and takes judicial notice of the
16 docket. See Fed. R. Evid. 201(c)(1).

17 The court will decide the motion on the papers. See
18 District Court General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May
19 13, 2020). The hearing on May 4, 2021, at 9:30 a.m. will
20 vacated.¹ Findings of fact and conclusions of law are set forth
21 below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052,
22 9014(c).

23
24 Background

25 The debtors are payees under a promissory note they hold
26 _____

27 ¹Oral argument will not assist in the decision-making
28 process or resolution of the motion. See Local Bankr. R.
9014-1(h), 1001-1(f). And because the motion cannot be granted,
further briefing is unnecessary. See Local Bankr. R. 9014-
1(f)(2)(C).

1 from the 2019 sale of their chiropractic practice. Schedule I
2 filed with the petition describes the promissory note as follows:

3 Debtor receives sporadic (during Covid) payments on
4 note from sale of business (Live Pure Chiropractic) as
5 sole source of income. All income under this note is
6 taxable. It is an unsecured note without guarantee of
7 payment apart from the integrity of the noteholder. He
8 is not licensed in the state of CA to practice and
9 accordingly is not able to generate income in CA in his
10 profession.

11 The promissory note provides the debtors with monthly income
12 of \$11,608.00 and, thus, annual income of \$139,296.00. The
13 debtors' annual income is above the annual median income
14 applicable in California.

15 There are three years in payments remaining on the
16 promissory note according to the Statement of Financial Affairs.

17 Analysis

18 Bankruptcy Code § 706(a) permits a debtor to convert from
19 chapter 7 to chapter 13 at any time provided the case has not
20 previously been converted. See 11 U.S.C. § 706(a). However, in
21 order to convert a debtor must be eligible to be a chapter 13
22 debtor under 11 U.S.C. § 109(e). See 11 U.S.C. § 706(d); Marrama
23 v. Citizens Bank of Massachusetts, 549 U.S. 365, 372-74 (2007).

24 This case has not previously been converted and the § 109(e)
25 debt limits are not at issue. However, § 109(e) also limits
26 chapter 13 eligibility to individuals "with regular income." See
27 11 U.S.C. § 109(e). An "individual with regular income" is
28 defined as an "individual whose income is sufficiently stable and
regular to enable such individual to make payments under a plan
under chapter 13[.]" 11 U.S.C. § 101(30).

1 Bankruptcy schedules are signed and filed under penalty of
2 perjury. See Fed. R. Bankr. P. 1008. As such, they have
3 evidentiary value. See Perfectly Fresh Farms, Inc. v. U.S.
4 Dep't. of Agric., 692 F.3d 960, 969 (9th Cir. 2012). According
5 to the debtors' bankruptcy schedules, the debtors' income is not
6 sufficiently stable and regular. Payments on the promissory note
7 are sporadic. Moreover, there is no guarantee that the monthly
8 payments required by the promissory note will be made timely, or
9 at all.

10 The debtors also lack income necessary that would enable
11 them to make payments under a chapter 13 plan. Because the
12 debtors' income is above the California state median they will
13 need income to fund a plan for not less than five years. See 11
14 U.S.C. § 1325(b)(4).² However, the debtors' sole source of
15 income extends for only three years when payments under the
16 promissory note are complete. And there is no evidence of any
17 other income after the promissory note is paid in full.

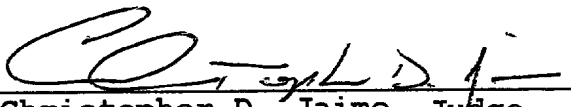
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20 ²To be sure, an above-median debtor could conceivably fund a
21 plan of less than five years if unsecured claims are paid in
22 full. See 11 U.S.C. § 1325(b)(4)(B). But that does not appear
23 to be possible here. The debtors have \$411,547.00 in unsecured
24 debt. Even at \$11,608.00 per month for the three years that
25 payments remain due under the promissory note, the debtors
26 generate a total of \$417,888.00. But that amount fails to take
27 into account taxes due on the payments received and all other
28 expenses. Indeed, according to Schedule J, after taxes and
expenses are paid, the debtors are left with a monthly net income
of \$23.00. Even considering that the debtors will no longer pay
approximately \$2,800.00 for their leased 2018 Lincoln Navigator
(stay relief granted) and 2019 Ford F350 (stay relief likely to
be granted), the debtors' income remains insufficient to pay 100%
of unsecured claims.

1 In short, the debtors are ineligible for chapter 13 relief
2 under § 109(e). Therefore,

3 IT IS ORDERED that the motion to convert is **DENIED WITHOUT**
4 **PREJUDICE.**

5 IT IS FURTHER ORDERED that the hearing on May 4, 2021, at
6 9:30 a.m. is **VACATED.**

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8 **Dated:** April 29, 2021

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11 Christopher D. Jaime, Judge
12 United States Bankruptcy Court
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Catherine King
P.O. Box 493491
Redding CA 96049

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